

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13441 OF 2023

Bosch Ltd. & Others

... Petitioners

Versus

Mandlik Sanish Suresh & 130 Ors.

... Respondents

...

Mr. K. S. Bapat, Sr. Advocate a/w A. D. Patwardhan a/w C. D. Deolalkar and Mr. T. R. Yadav for the Petitioners.

Mr. T. K. Prabhakaran, i/b Mr. Satyadev R. Pandey for Respondent Nos. 1 to 10 and 12 to 128.

...

CORAM : SANDEEP V. MARNE J.

DATED : 8 MAY 2024.

P.C.:-

1) Petitioners have filed this Petition challenging the Orders dated 11 August 2023 passed by Industrial Court, Nashik on Applications at Exhibits U-2, C-4 and C-6 in Complaint (ULP) No. 14 of 2023 filed by Respondent Workers. By Order passed on Exhibit U-2, the Industrial Court has allowed the Application and granted interim injunction in favour of Respondent-workers by directing Petitioners to pay wages (as per G-1N category) to the Respondent workers from the date of the Order upon they reporting for duty irrespective of red light activation signal and marking attendance by alphabet 'B' against their attendance record. In short, the interim relief granted in

favour of Respondent-workers mandates Petitioners to provide work and wages to the Respondents. Application at Exhibit C-4 was filed by Petitioners seeking dismissal of the Complaint on the ground that the same is barred by limitation. The Industrial Court has rejected the application at Exhibit C-4. Application at Exhibit C-6 was filed by Petitioners challenging territorial jurisdiction of Industrial Court to decide the Complaint, which is also rejected by the Industrial Court. This is how three Orders passed at Exhibit U-2, C-4 and C-6 are challenged in the present Petition.

2) So far as the Order dated 11 August 2023 granting interim relief in application at Exhibit U-2 is concerned, in my view the issue is already decided by Judgment of this Court in Petitions filed by Petitioners viz. Writ Petition No. 1169 of 2022 and Writ Petition No. 1189 of 2022 decided on 1 July 2022. In those Petitions, also Petitioners had challenged similar Order granting interim relief in respect of other workers. After considering the submissions canvassed by the learned counsel appearing for rival parties, this Court has held as under:

“8] I have appreciated the aforesaid submissions. Amongst other, facts which are not disputed are, existence of employer-employee relationship between the Petitioners and Respondents-employees. Respondents-employees have come out with a case that they have lost faith in the recognized Union and its office bearers and as such in their individual capacity have taken out proceedings under the provisions of the Act of 1971. In the complaints which are preferred by the Respondents-employees, reliefs are claimed based on aforesaid undisputed relationship, terms of settlement viz. conversion from OJTs to NETWs and the appointment orders.

9] It is specifically claimed by the Respondents-employees in their complaint that they are workmen and classified and designated as NETWs referred above and are entrusted to do skilled and operational work in relation to manufacturing activities. They have further pleaded that they are doing similar work as is done by the permanent workmen and are working with the Petitioners since 8 to 12 years. It is also claimed that they are in continuous service of the

Petitioners and even if break is given, fact remains that each year, they have worked for more than 240 days. It is further claimed that a new series of employees code came to be started from 21/10/2021 in spite of the fact that they were doing the work of similar nature which they have discharged for last more than 6 to 7 years based on the same qualification. Based on above, in ULP Complaint declaration of unfair labour practice was sought and directions were prayed to the Petitioners to permit the Respondents-employees to resume the work.

10] *It appears from the pleadings that Respondent No.4 – Union has 792 permanent workers as its members, whereas OJT/NETW, Apprentices, Contract Workers who are about 3000 are not permitted membership. It is specifically claimed in the complaint that Respondent-Union is acting hand-in-glove with the Employer who is indulging in unfair labour practice. As such, they have preferred the complaint independently.*

11] *Conversion plan from On Job Trainees to New Entrant Workmen which is in the form of settlement under sub-clause (p) of Section 2 of the Industrial Disputes Act in express terms confers New Entrant Temporary Workmen status. Conferment of such status can be inferred from the factual matrix viz. date of entry as On Job Trainees and completion of 48 months as mentioned in the aforesaid settlement. These employees are working in various shifts and are discharging their duties out of perennial work available with the Petitioners. It appears that Petitioners with an intention to extract perennial/permanent nature of work from the temporary employees at much cost saving have allegedly indulged into unfair labour practice as is claimed. Based on the above, they have specifically alleged in the complaint that they are in continuous service as contemplated under Section 25-B of the Industrial Disputes Act and Section 2(g) of the Model Standing Order in preceding 12 months period. It has been also claimed by them that in spite of there being regular work available, Petitioners are enforcing forced idleness on the workmen or sought of creating lay off. What is narrated in the pleadings i.e. para 3.17 of the complaint in categorical terms speaks of very conduct of Respondent-recognized Union.*

12] *In the aforesaid backdrop, it cannot be said that Respondents-employees cannot pursue their complaint on their own and has to approach the Tribunal against the Petitioners through Respondent-Union only. Once it is brought on record by the Respondents-employees that Respondent-Union is ineffective and not willing to pursue the claim of Respondents-employees with the Petitioners-Employers, it shall always be open to the employees to prefer the complaint. A support can be drawn from the judgment of the Bombay High Court in the case of Carona Ltd vs. Sitaram Atmaram Ghag reported in **2000-III-LLJ-296-Bom.***

13] *This takes me to the next submission of Mr. Bapat as to settlements arrived at and status of the Respondents-employees as that of temporary workmen. The appointment order dated 21/04/2016 issued to one of the Respondents-employees by the Petitioners is referred to in the impugned orders for the purpose of establishing prima facie case. Said order appears to have been issued upon successful completion of training. The order does not speak of a specific period of appointment and fact remains that names of the Respondents-employees are included in the Muster Roll. It appears that Respondents-employees were*

performing perennial and permanent nature of work. Employees were offered monthly payment of wages with further assurance of 208 hours of work per month alongwith other incentives HRA etc. Appointment of the Respondents-employees is governed by certified standing order. Aforesaid fact is not disputed by the Petitioners.

14] In this backdrop, if we appreciate the claim put-forth by the Petitioners as to the status of the Respondents-employees as that of New Entrant Temporary Workmen, still prima facie it is demonstrated that Respondents-employees were offered perennial nature of work with necessary statutory benefits. As far as reliance placed by Mr. Bapat on various settlements are concerned, Petitioners are unable to demonstrate as to how settlements arrived at with Respondent- Union binds Respondents-employees and as to how they are not entitled to prefer independent complaint. Rather, this Court has held that Respondents-employees' independent complaints are very much maintainable, particularly when recognized Union has not espouse their cause and as such they cannot be left remedy-less. In the aforesaid backdrop, it cannot be said that impugned orders which are of interim nature are illegal or warrant any interference in extraordinary jurisdiction.

15] Reliefs granted by way of impugned orders is considering rights conferred in Respondents-employees by virtue of their appointment orders and also their long standing employer-employee relationship. In this backdrop, it cannot be said that by granting interim relief, Court has almost granted final relief in the matter.

16] In this backdrop, I hardly see any reason which warrants interference under Article 227 of the Constitution of India. As such, both these Petitions san merit and are accordingly dismissed."

3) It appears that the Order passed by this Court on 1 July 2022 has been challenged by Petitioners and their Special Leave Petitions are pending. However, from perusal of Order dated 3 March 2023 passed by the Supreme Court, it appears that the Notice is issued in the SLPs for the limited purpose of exploring the possibility of amicable settlement. It appears that a dispute between the parties has been referred to mediation by Order dated 18 October 2023 which reads thus:

We have perused the earlier order passed by this Court on 3rd March 2023. After having heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the respondents-workmen, we direct that the dispute in these petitions be referred for mediation by Justice Smt. Nishita Mhatre, former

Judge of the Bombay as well as Calcutta High Court.

The parties will approach the learned Mediator within a period of one week from today for fixing a date for mediation meeting. The parties will provide a copy of the Special Leave Petitions to the learned Mediator.

We request the learned Mediator to complete the mediation proceedings by the end of this year and submit a report to the Registry. We leave to the learned Mediator to decide her remuneration.

Till the conclusion of mediation proceedings, the petitioners shall continue to pay salary of Rs.25,000/- (Twenty five thousand) per month to the concerned respondents with effect from 1st October, 2023.

With a view to facilitate mediation, the respondents will not proceed with the pending Contempt Petitions.

The Registry to forward a copy of this order to the learned Mediator.

List immediately after receipt of the report of the learned Mediator.

Thus, the Apex Court has directed payment of salary of Rs.25,000/- per month to the concerned Respondents during pendency of mediation proceedings.

4) It appears that the mediation proceedings have failed, and following order is passed by the Apex Court on 1 April 2024:

1. The learned Senior counsel – Mr. Vikas Singh appearing for the petitioners states that since the notice was issued only for the purpose of exploring the possibility of settlement which has failed and since the petitioners do not have sufficient work for the respondents, the petitioners are ready to send them to the other offices and production houses of the petitioners on transfer basis as that was one of the conditions of their employment. Learned Senior counsel further submits that the petitioners shall file an affidavit to the said effect. However, the learned counsel for the respondents states that since this offer is made for the first time, he shall have to take necessary instructions.

2. Let the petitioners file an affidavit in this regard within two weeks from today with a copy thereof to the learned counsel for the respondents, and the respondents shall file response to the said affidavit within two weeks thereafter. In the meantime, the petitioners shall make payment of the salary to the respondents of the last three months as similar order has been passed earlier on 18-10-2023.

3. List after four weeks.

4. The contempt proceedings filed by the respondents shall not be proceeded further till the pendency of the present proceedings. However, it is clarified that the other proceedings filed by the respondents in the High Court or Industrial Court shall continue.

5) In my view, this Court has already taken a view in similar Petitions by Order dated 1 July 2022 and challenge to the said Order is pending before the Apex Court only for the purpose of exploring the possibility of mediation, which has apparently failed. In my view therefore there is no reason to take a view different than the one taken by this Court in previous petitions.

6) So far as Petitioners' challenge to the Order dated 11 August 2023 on Application at Exhibit C-4 is concerned, it appears that the said application was filed seeking dismissal of the Complaint on the ground of limitation. Perusal of the Order of the Industrial Court would indicate that it has arrived at a conclusion that limitation is a mixed question of law and fact and evidence is required to be led for deciding the said issue. I am therefore not in agreement with the contention of Mr. Bapat that the Industrial Court has decided the issue of limitation finally. The issue of limitation is kept open to be decided after recording of evidence. In that view of the matter, there is no reason to disturb the Order dated 11 August 2023 passed on Exhibit C-4.

7) Petitioners have also challenged Order dated 11 August 2023 passed on Application at Exhibit C-6 rejecting the objection of territorial jurisdiction. There is no dispute to the position that Respondents were working in the Plant of Petitioners at Nashik and therefore it is incomprehensible as to why and how Petitioners could question territorial

jurisdiction of Industrial Court at Nashik. Mr. Bapat's contention is that in the Complaint filed by Respondents, Petitioner-Company with its Headoffice at Bangaluru as well as its Managing Director with address of Bangaluru are impleaded. That though Mr. B. Ananthraman posted at Nashik is also impleaded as third Respondent, he has already retired from service and is required to be deleted. I find this objection of territorial jurisdiction raised by Petitioners to be too technical, considering the fact that Respondents' claim for provision of employment is ultimately in respect of Petitioners' plant at Nashik. Therefore, merely because Petitioners' address at Bengaluru is indicated in the cause title of the complaint, the same would not mean that the Industrial Court would not have jurisdiction to entertain the Complaint. The Industrial Court has rightly rejected Petitioners' Application at Exhibit C-6.

8) Considering the overall conspectus of the case, I do not find any error in any of the Orders passed by the Industrial Court. Writ Petition is devoid of merits, and it is dismissed without any order as to costs.

9) After the Order is pronounced, Mr. Bapat would request for continuation of Interim Order granted by this Court on 4 September 2023. Considering the position that Petitioners want to test the Order before the Apex Court for being heard along with pending Special Leave Petitions, interim order granted by this Court on 4 September 2022 is extended for a period of eight weeks.

[SANDEEP V. MARNE J.]